



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

DMS Notice
QC – 10 – 4

June 7, 2010

Discard: Retain

TO WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Pep boys Settlement

Attached is a final judgment pursuant to a stipulation issued by the District Attorney's Office of San Bernardino County, in conjunction with the District Attorney's Offices of Fresno and Stanislaus Counties, filed against Pep Boys on April 20, 2010 for improper computation of value, pursuant to California Business and Professions Codes 12024.2.

We are very pleased with the excellent work done, on behalf of the people, by the prosecution team representing the various County District Attorney's Offices, as well as the State and county investigators that pursued these violations. Pep Boys was assessed civil penalties and cost recovery up to \$500,000. Investigative costs reached \$67,847.30 and civil penalties of \$232,152.70. An additional \$200,000 in civil penalties was suspended, pending compliance with paragraph four of this judgment.

San Bernardino County should be sure to report these penalties in the County Monthly Report (CMR). All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns in the report.

Sincerely,

Edmund E. Williams
Director

Cc P QV Special Investigators



COPY

1 MICHAEL A. RAMOS, DISTRICT ATTORNEY
2 COUNTY OF SAN BERNARDINO
3 R. GLENN YABUNO, Lead Deputy District Attorney
4 State Bar Number 109471
5 412 West Hospitality Lane, Suite 301
6 San Bernardino, California 92415-0023
7 Telephone: (909) 891-3330, Facsimile: (909) 891-3333

8 BIRGIT FLADAGER, DISTRICT ATTORNEY
9 COUNTY OF STANISLAUS
10 JOHN GOULART, Deputy District Attorney
11 832 Twelfth Street, Suite 300
12 Modesto, CA 95354
13 Telephone: (209) 525-5550, Facsimile: (209) 525-5910

14 ELIZABETH A. EGAN, DISTRICT ATTORNEY
15 COUNTY OF FRESNO
16 MICHAEL BRUMMELL, Deputy District Attorney
17 2220 Tulare Street, Suite 1000
18 Fresno, CA 93721
19 Telephone: (559) 488-3141, Facsimile: (559) 488-2800

20 Attorneys for Plaintiff

21 SUPERIOR COURT OF CALIFORNIA

22 COUNTY OF SAN BERNARDINO

23 PEOPLE OF THE STATE OF CALIFORNIA,)

24 Plaintiff,)

v.)

PEP BOYS,)

Defendant.)

NO.

CIVDS 1005316


FINAL JUDGMENT

PURSUANT TO STIPULATION

Plaintiff, appearing through its attorneys, Michael A. Ramos, District Attorney for the County of San Bernardino by R. Glenn Yabuno, Deputy District Attorney; Elizabeth A. Egan, District Attorney for the County of Fresno by Michael C. Brummel, Deputy District Attorney and Birgit Fladager, District

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 20 2010

By  Deputy

1 Attorney for the County of Stanislaus by John B. Goulart, Deputy District Attorney and Defendant, Pep
2 Boys, appearing through its attorney, LOEB & LOEB by Michael Mallow; and

3 Plaintiff and Defendant having stipulated to the entry of this Final Judgment and Permanent
4 Injunction prior to the taking of any proof and without trial or adjudication of any issue of fact or law;
5 and

6 The Court having considered the pleadings;

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

8 **JURISDICTION**

9 1. This action is brought under California law, and this Court has jurisdiction of the subject
10 matter and the parties.

11 **APPLICABILITY**

12 2. This Judgment, including the permanent injunction it contains, is applicable to Defendant
13 Pep Boys, its officers, directors, representatives, successors, assignees and all persons, partnerships,
14 corporations, and other entities acting under, by, through, on behalf of, or in concert with Defendant
15 with actual or constructive knowledge of this Judgment, and to the subsidiaries of Pep Boys, and their
16 respective officers, directors, representatives, successors, assignees and all persons, partnerships,
17 corporations, and other entities acting under, by, through, on behalf of, or in concert with any such
18 subsidiary with actual or constructive knowledge of this Judgment (hereinafter collectively referred to as
19 "Pep Boys" or "Enjoined Persons").

20 **INJUNCTION**

21 3. Pursuant to Business and Professions Code sections 17203 and 17535, Enjoined Persons,
22 and each of them, are permanently enjoined and restrained from directly or indirectly engaging in any of
23 the following acts or practices:

24 A. Making or causing to be made to the public any statement representing a price for
--

1 an item offered for sale, including but not limited to statements made on a store shelf, or sign
2 near the item, and charging a greater price at the time the item is purchased;

3 B. Charging at the time of sale of a commodity, a value which is more than the
4 lowest advertised, posted or quoted store price for the commodity, in violation of Business &
5 Professions Code § 12024.2;

6 C. Making or causing to be made in a store any false or misleading statement to the
7 public with respect to the price of items offered for sale.

8 4. Pursuant to Business and Professions Code sections 17203 and 17535, Enjoined Persons,
9 and each of them, shall initiate and enforce in every existing store in California, and in every new store
10 in California, a Compliance Program to correct mislabeled shelf prices, incorrect in-store advertised
11 prices, and inaccurate scanner prices. The Compliance Program described in paragraphs 4 A to G shall
12 terminate five (5) years after the date of entry of this Judgment. This program shall include, but is not
13 limited to, the following:

14 A. **CORPORATE PRICING PERSONNEL.** Pep Boys shall appoint one person at
15 the corporate level (hereinafter "CPP") who shall be charged with overseeing, with respect to all
16 stores in California: (a) the maintenance of pricing accuracy in the Price Scanning System, (b)
17 price changes, and (c) resolution of Pricing Discrepancies in the system or stores. The CPP may
18 delegate duties to other PEP BOYS employees, appoint "back-up" CPPs, or retain third-party
19 providers as the CPP deems reasonable and appropriate to assist with the CPP's responsibilities.
20 The CPP shall be the designated corporate contact for inquiries from State of California Weights
21 and Measures inspectors and/or any District Attorney for counties representing The People of
22 The State of California.

23 B. Each store in California shall designate for all hours it is open to the public an
24 employee or employees whose duties shall include those of Price Auditor ("PA"). The store
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1 manager may serve the function of the PA.

2 (1) The duties of the PA shall be to maintain in-store pricing accuracy, including,
3 but not limited to, price scanner accuracy. The duties of the PA shall include, but not be
4 limited to, conducting price audits, promptly correcting pricing errors, promptly
5 communicating pricing errors to appropriate management personnel, and recording the
6 results of price audits.

7 (2) Each store PA shall conduct a minimum of one audit per month of at least 50
8 items offered for sale in that store. The items for the audit may be selected by the CPP
9 and must include at least 30 randomly selected items and may include no more than
10 twenty targeted items. The sampling process for the randomly selected items shall be
11 modeled on the most current edition of the National Institute of Standards and
12 Technology Handbook 130—Examination Procedures for Price Verification, or
13 alternatively, pursuant to a randomized selection plan that is approved by counsel for
14 Plaintiff. Pricing errors discovered during such audits shall be corrected in the store and
15 promptly communicated to the Area Director. If it appears that a pricing error may
16 extend beyond a single store, the Area Director shall report it to the CPP to take
17 appropriate action statewide.

18 (3) The PA shall be instructed to forward all reports and notices of inspections
19 conducted by the state or local department of Weights and Measures to the CPP.

20 C. The PA shall maintain a hard copy or electronic log of each audit, which log shall
21 include: (1) the date and time of the audit, (2) the name and title of the person conducting the
22 audit, (3) the number of items audited, and (4) a list of pricing errors discovered during that audit
23 including the incorrectly priced item's description. The PA logs shall be transmitted to a relevant
24 Area Director, electronically or by hardcopy, on at least a monthly basis.

1 (1) The log shall be maintained in the store for a period of at least three (3)
2 months from the date of each audit. The log shall be maintained in hard copy or
3 electronic format for a period of at least three (3) years from the date of the audit at the
4 corporate headquarters.

5 (2) The log shall be made available for inspection
6 within two (2) business days of the written request of any Weights and Measures Official
7 directed to the CPP. (As used in this Judgment, the term Weights and Measures Official
8 shall mean any representative of the State of California Division of Measurement
9 Standards, Department of Food and Agriculture, or any representative of a County Sealer
10 or Director of a County Department of Agriculture, or any representative of the
11 California Attorney General, a district attorney, or a city attorney.)

12 D. Each time an advertisement is distributed covering one or more products in a store
13 in California, the PA shall perform a price verification of all advertised items, prior to or on the
14 effective date of the advertisement. Each time a price is changed in a store, the PA shall perform
15 a price verification to assure that all shelf prices and in-store signs are accurate. The PA shall
16 assure that any pricing inaccuracies are corrected promptly.

17 E. Each store shall maintain a daily Price Discrepancy Report reflecting all scanner
18 and pricing errors detected at the cashier. These reports shall be maintained at the store for a
19 period of at least three years from the date of each report, and shall be made available for
20 inspection immediately upon the request of any Weights and Measures Official. The scanner
21 and shelf prices for all items that were the subject of a customer complaint resulting in a price
22 override, shall be checked and if found erroneous, corrected within one (1) hour of the customer
23 complaint.

24 F. Whenever Defendant is notified by a customer and verifies that an item has
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1 scanned at a price that is higher than the lowest shelf or in-store advertised price, the customer
2 shall receive a Five Dollar (\$5.00) reduction from the lowest advertised price for one of the items
3 or, if the item's lowest shelf or in-store advertised price is Five Dollars (\$5.00) or less, the
4 customer shall receive one unit of such item for free. Additional purchases of the same item shall
5 be at the lowest advertised price.

6 (1) Defendant shall inform customers of this policy by posting a sign in a location
7 clearly visible to customers standing in the check-out line at every checkout stand in
8 every store in California.

9 (2) The signs shall be at least eight and one-half
10 inches by eleven inches (8 1/2 x 11") in size and shall state: SCANNER PRICE
11 GUARANTEE TO OUR CUSTOMERS: "IF AN ITEM SCANS AT A PRICE HIGHER
12 THAN THE SHELF LABEL PRICE OR STORE SIGN PRICE, WE WILL CORRECT
13 THE ERROR AND DEDUCT FIVE DOLLARS (\$5.00) FROM THE LOWEST
14 ADVERTISED PRICE OF ONE UNIT OF SUCH ITEM. IF THE LOWEST
15 ADVERTISED PRICE IS FIVE DOLLARS (\$5.00) OR LESS, YOU WILL RECEIVE
16 ONE UNIT OF SUCH ITEM FOR FREE." The phrase "Price Guarantee To Our
17 Customers" shall be typed in 40-point bold print. The remainder of the text in the sign
18 shall be typed in 30-point bold print.

19 G. The records of the in-house procedures and audits required by this Judgment shall
20 not be admissible in any subsequent proceeding against or relating to Defendant by Plaintiff herein or by
21 any third parties. Except, such records shall be admissible in subsequent proceedings to establish
22 compliance or failure of compliance with the provisions of paragraph 4 of this Judgment.

23 5. Neither this Injunction, nor any provision hereof, shall be a defense, or be admissible in
24 support of a defense, to an action prosecuted by a government agency on behalf of the People for a
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1 violation of any consumer protection law including, but not limited to violations of the Business and
2 Professions Code.

3 **MONETARY RELIEF**

4 6. Defendant shall be liable for reimbursement of costs incurred by the agencies set forth in
5 Paragraph 7 and for civil penalties in the total sum of FIVE HUNDRED THOUSAND and 00/100
6 DOLLARS (\$500,000), of which TWO HUNDRED THOUSAND and 00/100 DOLLARS (\$200,000)
7 shall be suspended subject to the terms and conditions set forth herein.

8 7. Within five days after notice of entry of this Judgment, Defendant shall tender payment
9 of THREE HUNDRED THOUSAND and 00/100 DOLLARS (\$300,000) via wire transfer or check
10 payable to the San Bernardino County District Attorney, c/o R. Glenn Yabuno, San Bernardino County
11 District Attorney's Office, 412 W. Hospitality Lane, Suite 301, San Bernardino, California 92415-0023.
12 From this payment, reimbursement for costs shall be distributed to the below listed agencies as follows:

13 San Bernardino: \$23,520.00

14 Kings County: \$564.40

15 Fresno County: \$1,141.57

16 Orange County: \$504.00

17 Napa County: \$1,782.00

18 Riverside County: \$5,495.88

19 San Diego County: \$2,494.92

20 Sonoma County: \$1,859.76

21 Santa Clara County: \$4,530.59

22 Stanislaus County: \$684.91

23 Ventura County: \$3,025.00

24 Los Angeles County: \$16,830.05

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1 CA. DMS: \$2,913.52

2 San Bernardino County DA's Office:\$2,500.00

3 The total amount of cost reimbursement shall be \$67,847.30. The balance of \$232,152.70 shall be
4 deemed a civil penalty pursuant to California Business & Professions Code Sections 17206 and 17500.

5 Pursuant to Government Code Section 26506 said civil penalty shall be divided and paid to the
6 prosecuting agencies bringing this action as follows:

7 San Bernardino County DA's Office:\$77,552.70

8 Stanislaus County DA's Office: \$77,300.00

9 Fresno County DA's Office: \$77,300.00

10
11 8. If Defendant violates Paragraph 4 of this Judgment, Plaintiff may request, upon regularly
12 noticed motion, that the Court order the suspended judgment due and payable. Prior to the filing on any
13 motion the Parties shall meet and confer and use their best efforts to resolve all outstanding issues. In the
14 event a motion is filed, Defendant shall have the right to oppose such motion pursuant to the rules
15 governing motion practice generally, unless the parties agree or the Court orders an alternate briefing
16 schedule.

17 9. Defendant shall bear its own attorney's fees and costs.

18 10. All parties to this action agree not to seek any further relief relating to the matters alleged
19 in the Complaint herein. This paragraph is intended to, inter alia, make clear that Plaintiff shall not seek
20 further relief or penalties for the consumer overcharges or advertising violations of which they are aware
21 as of the date of this Stipulated Final Judgment.

22 RETENTION OF JURISDICTION

23 11. Jurisdiction is retained for the purpose of enabling any party to this Judgment to apply to
24 the Court at any time for such further orders and directions as may be necessary and appropriate for the
-- construction or carrying out of the injunctive provisions of this Judgment, for the modification of any of

1 the injunctive provisions of this Judgment, and for the enforcement of, compliance with, and for the
2 punishment of violations of this Judgment.

3 12. The Final Judgment has been reviewed by the Court, and based upon the representations of
4 the parties, the Court finds that it has been entered in good faith and is fair, just, and equitable to protect
5 the public interest. The parties agree that the terms of this Final Judgment are intended to provide
6 complete relief to the People of the State of California. This Final Judgment shall be given res judicata
7 effect pertaining to any of the acts, practices, or conduct of the nature alleged in the Complaint filed
8 contemporaneously with this Final Judgment, which acts allegedly occurred prior to the date of the entry
9 of this Final Judgment.

10 13. This Final Judgment may be executed in counterparts.

11 14. This Stipulated Judgment shall take effect immediately
12 upon its filing and without the filing of a Notice of Entry of Stipulated Judgment.

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14 15. The clerk is directed to immediately enter this Judgment.

15
16 IT IS SO ORDERED:

17 DATED: 4-20-10

JANET M. FRANGIE

JUDGE OF THE SUPERIOR COURT

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1 APPROVED AS TO FORM AND CONTENT:

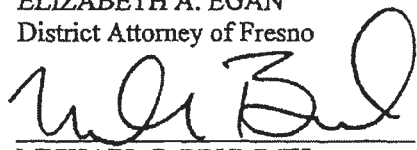
2 DATED: 4/19, 2010.

MICHAEL A. RAMOS
District Attorney of San Bernardino

3
4 By: 
5 R. GLENN YABUNO
6 Deputy District Attorney


7 DATED: April 6, 2010.

ELIZABETH A. EGAN
District Attorney of Fresno

8
9 By: 
10 MICHAEL C. BRUMMEL
Deputy District Attorney

11 DATED: April 7, 2010.

BIRGIT FLADAGER
District Attorney of Stanislaus County

12
13 By: 
14 JOHN B. GOULART
15 Deputy District Attorney

16 DATED: _____, 2010.

LOEB & LOEB
Attorneys for Defendant

17
18 By: _____
19 MICHAEL L. MALLOW

20 DATED: _____, 2010.

PEP BOYS

21
22 By: _____
23 BRIAN D. ZUCKERMAN
24 SENIOR VICE PRESIDENT &
GENERAL COUNSEL

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APPROVED AS TO FORM AND CONTENT:

DATED: _____, 2010.

MICHAEL A. RAMOS
District Attorney of San Bernardino

By: _____
R. GLENN YABUNO
Deputy District Attorney

DATED: _____, 2010.

ELIZABETH A. EGAN
District Attorney of Fresno

By: _____
MICHAEL C. BRUMMEL
Deputy District Attorney

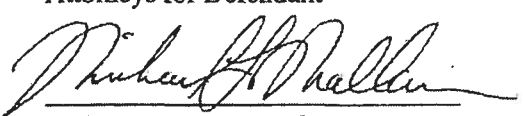
DATED: _____, 2010.

BIRGIT FLADAGER
District Attorney of Stanislaus County

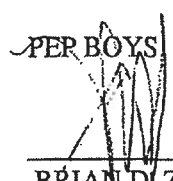
By: _____
JOHN B. GOULART
Deputy District Attorney

DATED: April 6 _____, 2010.

LOEB & LOEB
Attorneys for Defendant

By: 
MICHAEL L. MALLOW

DATED: 4/6 _____, 2010.

By:  PER BOYS
BRIAN D. ZUCKERMAN
SENIOR VICE PRESIDENT &
GENERAL COUNSEL

